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**THE UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

KAMILLE COULTER, on behalf of  
herself and all others similarly  
situated,

Plaintiff,

vs.

INTERNATIONAL CRUISE &  
EXCURSION GALLERY, INC.;  
and DOES 1 through 20, inclusive,  
and each of them,

Defendants.

Case No.

**CLASS ACTION**

**COMPLAINT FOR VIOLATIONS  
OF:**

- (1) Violations of the Telephone  
Consumer Protection Act, 47  
U.S.C. § 227, *et seq.*
- (2) Willful Violations of the  
Telephone Consumer Protection  
Act, 47 U.S.C. § 227, *et seq.*

**DEMAND FOR JURY TRIAL**

Plaintiff KAMILLE COULTER (“Plaintiff”), on behalf of herself and all  
others similarly situated, alleges the following upon information and belief based  
upon personal knowledge:

**NATURE OF THE CASE**

1. Plaintiff brings this action for herself and others similarly situated  
seeking damages and any other available legal or equitable remedies resulting

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1 from the illegal actions of Defendant INTERNATIONAL CRUISE &  
 2 EXCURSION GALLERY, INC., and DOES 1 through 20, inclusive, and each of  
 3 them (collectively referred to as “Defendants”), in negligently knowingly, and/or  
 4 willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the  
 5 Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”), thereby  
 6 invading Plaintiff’s privacy.

### 7 **JURISDICTION & VENUE**

8 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because  
 9 Plaintiff, a resident of California, seeks relief on behalf of a Class, which will  
 10 result in at least one class member belonging to a different state than that of  
 11 Defendant, a company with their principal place of business at 15501 North Dial  
 12 Boulevard, Scottsdale, Arizona, 85260-1619. Plaintiff also seeks up to  
 13 \$1,500.00 in damages for each call in violation of the TCPA, which, when  
 14 aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00  
 15 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and  
 16 the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”)  
 17 are present, and this Court has jurisdiction.

18 3. Venue is proper in the United States District Court for the Central  
 19 District of California pursuant to 18 U.S.C. §§ 1391(b) and 144(a) because  
 20 Defendant does business within the State of California and the County of Los  
 21 Angeles.

### 22 **PARTIES**

23 4. Plaintiff, Kamille Coulter (“Plaintiff”), is a natural person residing  
 24 in Los Angeles, California.

25 5. Defendant International Cruise & Excursion Gallery, Inc.  
 26 (“Defendant” or “International Cruise & Excursion Gallery”) is a Delaware  
 27 corporation with its principal place of business at 15501 North Dial Boulevard,  
 28 Scottsdale, Arizona 85260-1619. Plaintiff is informed and believes that

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1 International Cruise & Excursion Gallery conducted and conducts business in  
 2 Los Angeles County. Furthermore, its registered agent for service of process is  
 3 listed with the Secretary of State as CT Corporation System at 3800 North  
 4 Central Avenue, Suite 460, Phoenix, Arizona 85012.

5 6. The above named Defendant, and its subsidiaries and agents, are  
 6 collectively referred to as “Defendants.” The true names and capacities of the  
 7 Defendants sued herein as DOE DEFENDANTS 1 through 20, inclusive, are  
 8 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious  
 9 names. Each of the Defendants designated herein as a DOE is legally  
 10 responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court  
 11 to amend the Complaint to reflect the true names and capacities of the DOE  
 12 Defendants when such identities become known.

13 7. Plaintiff is informed and believes and thereon alleges that at all  
 14 relevant times, each and every Defendant was acting as an agent and/or  
 15 employee of each of the other Defendants and was the owner, agent, servant,  
 16 joint venturer and employee, each of the other and each was acting within the  
 17 course and scope of its ownership, agency, service, joint venture and  
 18 employment with the full knowledge and consent of each of the other  
 19 Defendants. Plaintiff is informed and believes and thereon alleges that each of  
 20 the acts and/or omissions complained of herein was made known to, and ratified  
 21 by, each of the other Defendants.

22 8. At all times mentioned herein, each and every Defendant was the  
 23 successor of the other and each assumes the responsibility for each other’s acts  
 24 and omissions.

### 25 **FACTUAL ALLEGATIONS**

26 9. Beginning on or around the afternoon of October 20, 2015,  
 27 Defendant contacted Plaintiff on her cellular telephone at (310) 462-\*\*\*\*, in an  
 28 attempt to communicate with Plaintiff regarding loyalty rewards for an

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1 international cruise. The original calls came from what is believed to be an  
 2 internet generated spoof number starting with the area code prefix (520).  
 3 Defendant is known to use the number (520) 448-0315.

4 10. Defendant used an “automated telephone dialing system,” as  
 5 defined by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to  
 6 communicate with Plaintiff regarding services from “International Cruise &  
 7 Excursion Gallery.”

8 11. Defendant’s call(s) constituted calls that were not for emergency  
 9 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

10 12. Defendant’s call(s) were placed to telephone numbers assigned to a  
 11 cellular telephone service for which Plaintiff incurs a charge for incoming calls  
 12 pursuant to 47 U.S.C. § 227(b)(1).

13 13. Defendant never received Plaintiff’s “prior express consent” to  
 14 receive calls using an automated dialing system or an artificial or prerecorded  
 15 voice on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

### 16 **CLASS ALLEGATIONS**

17 14. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules  
 18 of Civil Procedure and/or other applicable law, on behalf of herself and all others  
 19 similarly situated, as a member of the proposed class (hereafter "the Class")  
 20 defined as follows:

21 All persons within the United States who received any  
 22 telephone calls from Defendant to said person’s cellular  
 23 telephone made through the use of any automatic telephone  
 24 dialing system or an artificial or prerecorded voice and such  
 25 person had not previously provided express consent to  
 26 receiving such calls within the four years prior to the filing of  
 27 this Complaint

28 15. Plaintiff represents, and is a member of the Class, consisting of All

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1 persons within the United States who received any telephone call from  
 2 Defendant to said person's cellular telephone made through the use of any  
 3 automatic telephone dialing system or an artificial or prerecorded voice and such  
 4 person had not previously not provided their cellular telephone number to  
 5 Defendant within the four years prior to the filing of this Complaint.

6 16. Excluded from the Class are governmental entities, Defendants, any  
 7 entity in which Defendants have a controlling interest, and Defendants' officers,  
 8 directors, affiliates, legal representatives, employees, co-conspirators, successors,  
 9 subsidiaries, and assigns. Also excluded from the Class are any judges, justices  
 10 or judicial officers presiding over this matter and the members of their immediate  
 11 families and judicial staff.

12 17. This action is properly maintainable as a class action. This action  
 13 satisfies the numerosity, typicality, adequacy, predominance and superiority  
 14 requirements for a class action.

15 18. **Numerosity:** The proposed Class is so numerous that individual  
 16 joinder of all members is impracticable. Due to the nature of the trade and  
 17 commerce involved, Plaintiff does not know the number of members in the  
 18 Class, but believes the Class members number in the thousands, if not more.  
 19 Plaintiff alleges that the Class may be ascertained by the records maintained by  
 20 Defendants.

21 19. Plaintiff and members of the Class were harmed by the acts of  
 22 Defendant(s) in at least the following ways: Defendant(s) illegally contacted  
 23 Plaintiff and Class members via their cellular telephones thereby causing  
 24 Plaintiff and Class members, without their "prior express consent," to incur  
 25 certain charges or reduced telephone time for which Plaintiff and Class members  
 26 had previously paid by having to retrieve or administer message(s) left by  
 27 Defendant during those illegal calls, and invading the privacy of said Plaintiff  
 28 and Class members.

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20. **Common Questions of Law and Fact Predominate:** There are only a few legal and factual issues to determine if there is liability under the TCPA and for each of those questions of law and fact, common issues to the Class predominate over any questions that may affect individual Class members, in that the claims of all Class members for each of the claims herein can be established with common proof. Common questions of fact and law include, but are not limited to, the following:

- (a) Whether, within the four years prior to the filing of this Complaint, Defendant(s) made any calls (other than a call made for emergency purposes or made with the prior express consent of the called party) to a Class member using any automated dialing system or an artificial or prerecorded voice to any telephone number assigned to a cellular telephone service;
- (b) Whether Plaintiff and the Class members were damaged thereby, and the extent of the statutory damages for each such violation; and
- (c) Whether the Defendant(s) should be enjoined from engaging in such conduct in the future.

21. **Typicality:** Plaintiff's claims are typical of the claims of members of the Class, as Plaintiff was subject to the same common course of conduct by Defendant(s) as all Class members. The injuries to each member of the Class were caused directly by Defendant(s)' wrongful conduct as alleged herein.

22. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained counsel with substantial experience in handling complex class action litigation. Plaintiff and his counsel are committed to prosecuting this action vigorously on behalf of the Class and have financial resources to do so.

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1           23. **Superiority of Class Action:** A class action is superior to other  
 2 available methods for the fair and efficient adjudication of the present  
 3 controversy. Class members have little interest in individually controlling the  
 4 prosecution of separate actions because the individual damage claims of each  
 5 Class member are not substantial enough to warrant individual filings. In sum,  
 6 for many, if not most, Class members, a class action is the only feasible  
 7 mechanism that will allow them an opportunity for legal redress and justice.  
 8 Plaintiff is unaware of any litigation concerning the present controversy already  
 9 commenced by members of the Class. The conduct of this action as a class  
 10 action in this forum, with respect to some or all of the issues presented herein,  
 11 presents fewer management difficulties, conserves the resources of the parties  
 12 and of the court system, and protects the rights of each Class member.

13           24. Moreover, individualized litigation would also present the potential  
 14 for varying, inconsistent, or incompatible standards of conduct for Defendants,  
 15 and would magnify the delay and expense to all parties and to the court system  
 16 resulting from multiple trials of the same factual issues. The adjudication of  
 17 individual Class members' claims would also, as a practical matter, be  
 18 dispositive of the interests of other members not parties to the adjudication, and  
 19 could substantially impair or impede the ability of other Class members to  
 20 protect their interests.

21           25. Plaintiff and the members of the Class have suffered and will  
 22 continue to suffer harm as a result of Defendant(s)' unlawful and wrongful  
 23 conduct. Defendant(s) have acted, or refused to act, in respects generally  
 24 applicable to the Class, thereby making appropriate final and injunctive relief  
 25 with regard to the members of the Class as a whole.

26 ///

27 ///

28 ///



**FIRST CAUSE OF ACTION**

**(VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT,  
47 U.S.C. *ET SEQ.*)**

**(Against All Defendants)**

26. Plaintiff hereby incorporates by reference and re-alleges each and every allegation set forth in each and every preceding paragraph of this Complaint, as though fully set forth herein.

27. The foregoing acts and omission of Defendants constitute numerous and multiple violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227, *et seq.*

28. As a result of Defendants violations of 47 U.S.C. § 227, *et seq.*, Plaintiff and the Class Members are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

29. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION**

**(KNOWING AND/OR WILLFUL VIOLATION OF  
THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. *ET SEQ.*)**

**(Against All Defendants)**

30. Plaintiff hereby incorporates by reference and re-alleges each and every allegation set forth in each and every preceding paragraph of this Complaint, as though fully set forth herein.

31. The foregoing acts and omissions of Defendants constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227, *et seq.*

32. As a result of Defendant(s)' violations of 47 U.S.C. § 227, *et seq.*, Plaintiff and the Class Members are entitled to an award of \$1,500.00 in statutory

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1 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and  
2 47 U.S.C. § 227(b)(3)(C).

3 33. Plaintiff and the Class members are also entitled to and seek  
4 injunctive relief prohibiting such conduct in the future.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for  
7 relief and judgment as follows:

8 1. An order certifying this action as a class action and appointing  
9 Plaintiff and his counsel to represent the Class;

10 2. For the first cause of action:

- 11 • Plaintiff and Class members are entitled to and request \$500.00  
12 in statutory damages, for each and every violation, pursuant to 47  
13 U.S.C. § 227, *et seq.*;
- 14 • Preliminary and permanent injunctive relief enjoining  
15 Defendant(s), their agents, servants and employees, and all  
16 persons acting in concert with them, from engaging in, and  
17 continuing to engage in, the unlawful calls made with automated  
18 dialing systems to cellular phones without prior express consent;
- 19 • Attorneys' fees, costs and any and all other relief that the Court  
20 deems just and proper.

21 3. For the second cause of action:

- 22 • Plaintiff and Class members are entitled to and request \$1,500.00  
23 in statutory damages, for each and every violation , pursuant to  
24 47 U.S.C. § 227, *et seq.*;
- 25 • Preliminary and permanent injunctive relief enjoining  
26 Defendant(s), their agents, servants and employees, and all  
27 persons acting in concert with them, from engaging in, and  
28 continuing to engage in, the unlawful calls made with automated

dialing systems to cellular phones without prior express consent;

- Attorneys' fees, costs and any and all other relief that the Court deems just and proper.

Dated: October 30, 2015

Respectfully submitted,

By: /s/ John P. Kristensen

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## DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury for all such triable claims.

Respectfully submitted,

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